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No. 555

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1962

C. GEORGE SWALLOW,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI

PETITION FOR REHEARING

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Petitioner respectfully presents his petition for rehearing pursuant to authority granted by Rule 58(2) of the Court.

As grounds therefor the following substantial grounds are set forth which have not been previously presented for consideration by the Court.

I

The income tax provisions of the Internal Revenue Code, U.S.C. 26, considered as a whole, together with the penal provisions thereof, Sections 145(b) and 7201, are unconstitutional in that such provisions and statute violate the Fifth and First Amendments to the Constitution of the United States.

In Respect of the Fifth Amendment Contentions

Due process concepts fairly imply that the Government

should not require citizens to assess themselves, under criminal penalty if they are wrong, pursuant to a law which is incomprehensible to the citizen. In fact most people do not and cannot reasonably be expected to know how to make out a true and correct income tax return. The body of income tax law has many sources, publications, and consequently diverse interpretations, e.g., federal court decisions, tax court decisions, Treasury Department regulations, bulletins, memorandums, rulings, etc., and is complicated and intricate. Judicial recognition of the interplay of judicial decisions upon the Congressional Act involved exists. *James v. United States*, 366 U.S. 213, 81 S. Ct. 1052. The complexity and intricate nature of the tax law was recognized by Mr. Justice Douglas in his concurring opinion in *C.I.R. v. Lester*, 366 U.S. 299, 306, 81 S. Ct. 1343, 1348. The vagueness and uncertainty of the tax law and administrative interpretations thereof by Government officials could be condemned under the rule of *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 41 S. Ct. 298.

The income tax law viewed as a whole is discriminatory, arbitrary and unreasonable, and such can be violation of due process. *Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693. Examples of such discriminations in the income tax law are: married people have benefits that unmarried do not; corporations are taxed at lower rates than individuals; taxpayers having capital gains have limitations upon tax for long term holdings; income from oil and minerals receive special tax rates; foreign income has exemptions from tax; co-operatives of certain occupations receive tax advantages; savings and loan institutions, privately owned, receive special tax alleviations; and many other situations not here mentioned.

The large use of tax moneys to pay to foreign governments or to aid foreigners generally imposes on the citizens of this country an unconstitutional burden, and amounts to the Government doing indirectly through the power of taxation what it could not otherwise compel the citizens of this country to

do, i.e., support the functions of foreign governments or aid their citizens. This fact gives rise to objections and opposing principles set forth in decisions of the Court. See *United States v. Butler*, 297 U.S. 1, 56 S. Ct. 312; *Pollack v. Farmer's Loan & Trust Co.*, 157 U.S. 429, 15 S. Ct. 673.

In Respect of the First Amendment Contentions

It is here contended that the grace in payment of taxes given to religious groups and religionists, and deductions afforded taxpayers donating to the same, violates the First Amendment prohibition against the establishment of a religion. (Reference, 26 U.S.C. 107, 170(c)(2)(B), 501(c)(3), (d).) This situation naturally imposes a greater tax burden on all other taxpayers and groups affected by taxes, and materially aids in the establishment of the religious groups and persons connected therewith who benefit from such tax provisions. Such governmental sanction and aid to religious organizations and religionists is, in principle, opposed by the decision of the Court in *Engel v. Vitale*, 370 U.S. 421, 82 S. Ct. 1261.

II

A matter of prejudice existed in the case which has not been brought to the attention of the Court. During the trial a newspaper article in the Denver Post, the most prominent newspaper in Denver, Colorado, appeared ascribing to petitioner an "apparent bribery attempt" to induce the witness Swift to change his testimony. This article was prejudicial and inflammatory, and, it is here contended, not correct factually. This was brought to the attention of the trial court in motion for new trial (R.7.), and in the trial court's ruling, the trial judge apparently gave his summary view in agreement (R. 444-445.); however, all Mr. Swift did was to change his story to conform to the truth at petitioner's insistence, which was not improper. The failure of the trial court to grant the motion, in light of the probability that one or more of the jurors did see or hear about such newspaper article, is basis for the assertion that inadequate protection

was given the petitioner at the trial. See *United States v. Accardo*, 298 F. 2d 133. Also, considerations of public thinking in regard to the trial and the fairness thereof enter into the argument. See *Briggs v. United States*, 221 F. 2d 636, 638, 639.

III

On review of the record it appears that an element of time and sequence of events renders material and controlling testimony and evidence against petitioner inconclusive and incompetent. The testimony of the witnesses Watson and Edwards as to the out-of-court statements of petitioner was practically determinative of the decision of the Court of Appeals. (See Petition for Writ of Certiorari, pp. 25, 45.) It can be shown by the record that the statements made to the witness Watson were made in the Spring of 1955 (presumably after the 1953 and 1954 tax returns were filed) (R. 272.), and that the statements made to the witness Edwards were made late in 1954 (R. 280.), which would have no bearing upon the 1953 return, at least. These points are material upon the proofs of intent of petitioner at the time of the filing of the tax returns in question, and substantially destroy the effectiveness of such testimony.

IV

Matters of prejudice surrounded the trial of petitioner, perforce cumulative, but telling in effect. For example, innuendo as to wrongdoing or character deficiencies of petitioner, either not actually proven or not material to the issues of the case, adduced through the testimony of the witnesses Maxwell, Randol, Hershfield, Mrs. Levy, Watson, Edwards, Swift; harrying of defense counsel in cross-examination of the witness Markison by the trial judge; the prosecution dwelling on evidence that could have been stipulated by counsel, i.e., the long drawn out introduction of grocery checks cashed by petitioner's wife (through the witness Kapla) took approximately one full day at the trial, and, the evidence as to house and rental payments adduced through the witnesses Dr. Levy and DeLaney.

WHEREFORE, petitioner respectfully prays the Court that this petition for rehearing be granted upon the foregoing grounds.

Respectfully submitted,

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